

Letter of Findings: 01-20210108
Indiana Individual Income Tax
For the Tax Years 2017, 2018, and 2019

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Indiana Residents were not entitled to a full credit for local income taxes withheld and paid to another local jurisdiction; the Department correctly allowed a credit for Indiana local income taxes but only to the extent of that Indiana local tax.

ISSUE

I. Indiana Individual Income Tax - Out-of-State Local Income Taxes.

Authority: IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-3-3; IC § 6-3.6-8-6; IC § 6-8.1-5-1; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); [45 IAC 3.1-1-76](#).

Taxpayers protest the Department's assessments of individual income tax for the years 2017, 2018, and 2019.

STATEMENT OF FACTS

Taxpayers are individuals who live in Indiana and who filed 2017, 2018, and 2019 Indiana income tax returns. The Indiana Department of Revenue ("Department") reviewed the returns. The Department found that Taxpayers' W-2s indicated their Kentucky employer withheld local income tax for Louisville, Kentucky. The Department adjusted the return as follows:

For the year 2017, Taxpayers reported, as Indiana's, approximately \$1,100 of Kentucky county local tax. The Department allowed approximately \$750 as an "out-of-state county credit."

For the year 2018, Taxpayers reported, as Indiana's, approximately \$1,200 of Kentucky county local tax. The Department allowed approximately \$800 as an "out-of-state county credit."

For the year 2019, Taxpayers reported, as Indiana's, approximately \$1,200 of Kentucky county local tax. The Department allowed approximately \$800 as an "out-of-state county credit."

The Department adjustments resulted in an assessment of approximately \$1,200 in Indiana income tax because Taxpayers claimed more "credits" based on their interpretation of the W-2 information. Taxpayers disagreed with the assessments and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayers explained the basis for their protest. This Letter of Findings results.

I. Indiana Individual Income Tax - Out-of-State Local Income Taxes.

DISCUSSION

The issue is whether Taxpayers have established that the Department erred in adjusting their originally filed returns and in issuing assessments for additional 2017, 2018, and 2019 tax.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). "[E]ach assessment and

each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting their challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). To compute what is considered the resident/taxpayer's Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income and to calculate what would be his Indiana income tax after applying certain additions and subtractions to that starting point, with modifications thereafter.

Indiana has entered reciprocal agreements with several states. Under those agreements, Indiana resident-taxpayer who earns "income consisting of salaries, wages, and commissions from states [such as, Kentucky] with which Indiana has a reciprocal tax agreement must report all such income as if it were from Indiana." [45 IAC 3.1-1-76](#). Reciprocity, however, does not apply and automatically transfer the withholding tax credits between reciprocal states. Specifically, the same regulation provides, "Credit cannot be taken for any taxes withheld by or paid to any of these states in connection with salaries, wages, or commissions received from such states. If tax has been withheld by any of these states, a claim for refund should be filed with the state which withheld the taxes." *Id.*

Indiana law permits Indiana resident-taxpayers to claim an income tax credit - not exceeding their Indiana income tax due - for taxes he or she is required to pay to other states. IC § 6-3-3-3(a). Similarly, when the resident-taxpayer of an Indiana county is required to pay local income tax to a county of another state, the Indiana resident-taxpayer is entitled to a tax credit. IC § 6-3.6-8-6(a) (in effect during the years at issue) specifically provides:

Except as provided in subsection (b), if for a particular taxable year, a local taxpayer is liable for an income tax imposed by a county, city, town, or other local governmental entity located outside Indiana, that local taxpayer is entitled to a credit against the tax liability imposed under this article for that same taxable year. *The amount of the credit equals the amount of tax imposed by the other governmental entity on income derived from sources outside Indiana and subject to the tax imposed under this article.* However, the credit provided by this section may not reduce a local taxpayer's tax liability to an amount less than would have been owed if the income subject to taxation by the other governmental entity had been ignored. (*Emphasis*).

The tax credit - to the extent of "[t]he amount of county tax due on the Indiana return" - is applied against the Indiana county income tax owed. That is, if the amount of income tax the resident-taxpayer paid to a county of another state *is less* than the county income tax he or she would have owed under the Indiana return, the resident-taxpayer owes the amount of the difference for his or her Indiana county income tax. If the amount of income tax the resident-taxpayer paid to a county of another state *exceeds* the county income tax he or she would have owed under that person's Indiana return, the resident-taxpayer owes no Indiana county income tax. In any case, the resident-taxpayer will not receive a refund or claim a credit for the overpayment from Indiana on that income even when he or she has paid more tax to the county of another state.

In this instance, Taxpayers' W-2s showed that Kentucky employer withheld and remitted local withholding taxes to Louisville, Kentucky. As mentioned earlier, "[c]redit cannot be taken for any taxes withheld by or paid to any of these states in connection with salaries [or] wages [] received from such states. If tax has been withheld by any of these states, a claim for refund should be filed with the state which withheld the taxes." [45 IAC 3.1-1-76](#).

Finally, it should be noted that, pursuant to IC § 6-3.6-8-6, the Department properly computed and granted Taxpayers the tax credits in the total amount of approximately \$2,350. Taxpayers' W-2s and the income tax returns as filed indicated that the local income tax was paid to Louisville, Kentucky. The \$2,350 tax credit allowed represents Taxpayers' Indiana county income taxes for those years. Indiana law does not permit Taxpayers to claim a credit greater than what was due to Indiana local jurisdiction.

In short, the Department did what it was required to do; it granted a credit against Indiana local income tax but limited the credit to the amount of Indiana local income tax due.

FINDING

Taxpayers' protest is respectfully denied.

September 2, 2021

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